

Before the
Federal Communications Commission
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of
Public Interest Obligations
Of TV Broadcast Licensees

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To: The Commission

COMMENTS
of
PEOPLE FOR BETTER TV

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SUMMARY

People for Better TV is a broad-based national coalition concerned that television in the future become a place not only for entertainment, but a trusted source of education for our children and civic discussion for our community. We commend the Federal Communications Commission for opening this Inquiry into the Public Interest Obligations of Digital Television Broadcasters, and we repeat our call for the Commission to begin a rulemaking proceeding to ensure that sensible guidelines are put in place so that all members of the public benefit from digital television.

Our Comments include numerous letters from members of our coalition. These submissions range from the reports of citizens who visited stations and reviewed Quarterly Reports in the public files, to the extensive arguments of the Consumer Federation of America and Children Now, to the analysis of the Benton Foundation and the Project on Media Ownership. We trust the Commission will respect and reflect upon this public demonstration of concern about the need to preserve the public interest standard in the digital age, and set forth clear rules so that both broadcasters and the public can know what it means to operate in the public interest.

We recommend that all digital television broadcasters be required to comply with their public interest obligations on all channels they are licensed to use, as well as in their provision of ancillary and supplementary services. We oppose any reliance by the Commission upon supposedly "voluntary codes of conduct," however we support the adoption of a flexible approach to enforcing minimum requirements. We recommend that any deviation by a broadcaster to the Commission's minimum requirements be conditioned upon some sort of approval by the community of license.

Along with the Consumer Federation of America, we recommend that the Commission adopt rules that protect consumers. Specifically, the Commission should adopt guidelines to limit potential invasions for privacy by digital broadcasters, and guidelines to limit potentially abusive selling practices. Furthermore, the Commission should take steps to ensure that digital television does not contribute to the digital divide, by monitoring equipment costs and subscription charges.

People for Better TV endorses the Comment of Children Now, and recommends the immediate adoption of guidelines so that digital television broadcasters are in compliance with the Children's Television Act. We recommend that the Commission's Three-Hour Rule be applied proportionately to digital broadcasters who multicast. In addition, while we oppose censorship, we recommend the adoption of standards which give parents tools to screen programs they do not want their children to watch, such as a more advanced V-Chip, and an opportunity to "click-through" to ratings created by independent groups.

Academic research and anecdotal evidence strongly suggests that local broadcasters are not providing adequate discussion of local issues; thus People for Better TV recommends that digital broadcasters be required to provide one hour a day of local public affairs programs, and one public service announcement for every four commercials. In addition, we recommend that broadcasters be required to discover and serve the needs and interests of all segments of the community of license. New Internet technologies can assist in both discovering local needs and making it easier for the public to review the broadcasters' claims of service in their public files.

Finally, digital broadcasters should be in compliance with the Commission's EEO rules, and they should be required to use new technologies to make their programs more accessible to the disabled, and to those who speak languages other than English.

TABLE OF CONTENTS

I.	Introduction and Background	1
II.	Challenges Unique to the Digital Era	3
A.	The Commission Should Require DTV Broadcasters to Comply with Public Interest Obligations on All Channels that They Use.	3
1.	Rather Than Rely on Broadcasters to Abide by a Voluntary Code of Conduct, the Commission Should Adopt a Flexible Approach to Enforcing Minimum Requirements.	4
2.	Digital Broadcasters' Public Interest Requirements Should Apply to All Channels Including Ancillary and Supplementary Services.	6
B.	The Commission's Rules for Digital Television Should Include Protections for Consumers.	7
1.	The Commission Should Adopt Rules to Protect Consumer Privacy and Limit Abusive Selling Practices.	8
2.	The Commission Should Develop Steps to Ensure DTV Does Not Contribute to the Digital Divide.	8
C.	Digital Broadcasters Should Fulfill Their Obligations to Children by Offering Educational Programming and Services as well as Additional Rating Information	11
1.	The Three-Hour Rule Should be Transferred Proportionately to DTV.	11
2.	The Commission Should Adopt Standards to Make Independent Ratings Available	13
III.	Responding to the Community	14
A.	Digital Television Broadcasters Should Be Required to Provide One Hour a Day of Local Public Affairs Programming.	16
1.	Local Broadcasters are Failing to Address Local Needs	16
2.	Regulatory Certainty is Needed to Ensure Local Needs are Addressed.	19
3.	Local Public Affairs Programs Should Address the Needs of All Segments of the Community of License.	20
4.	Local Television News Should Not Be Considered a Substitute for Local Public Affairs Programming.	22
B.	Digital Broadcasters Should Provide One Public Service Announcement for Every Four Commercials, With at Least Equal Emphasis Placed on Independent and Locally Produced PSAs Addressing a Community's Local Needs.	23

C.	The Commission Should Require Broadcasters to Seek Out the Needs and Interests of All Segments of the Community of License.	24
1.	The Market Does Not Guarantee that All Segments of the Community Will Be Served.	24
2.	New Technologies Can Relieve the Administrative Burden of Discovering Community Needs.	26
D.	Digital Broadcasters Should Be Required to Disclose their Public Interest Programming and Activities Quarterly.	27
IV.	Enhancing Access to the Media	31
A.	The Commission Should Ensure that Digital Broadcasting is Accessible to All Americans.	31
B.	Diversity	34
1.	DTV Broadcasters Should Be Required to Comply with the FCC's EEO Rules.	34
2.	Under the People for Better TV Flexibility Approach Multicasting Broadcasters Could Devote Channel Space to Underserved Audiences	34
3.	Disaster Relief Information Should be Available in Multiple Languages.	35
V.	Conclusion	36

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People for Better TV hereby submits comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Inquiry, In the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360 (rel. Dec. 20, 1999) ("NOI"). People for Better TV is a national broad-based coalition established to ensure that television broadcasters are responsive to local community needs. A current list of member organizations is at Appendix A. The steering committee of People for Better TV includes the following organizations: Children NOW, Civil Rights Forum on Communications Policy, Communications Workers of America, Consumer Federation of America, League of United Latin American Citizens, National Association of the Deaf, National Organization for Women, National Urban League, Project on Media Ownership and U.S. Catholic Conference. These groups recognize the tremendous influence of television, and have joined together to encourage the Commission to adopt policies that serve the public.

I. Introduction and Background

On June 3, 1999, People for Better TV filed a Petition for Rulemaking and Petition for Notice of Inquiry at the Commission, explaining that the Telecommunications Act of 1996

("1996 Act") requires that the FCC determine the public interest obligations of digital broadcasters. People for Better TV noted that digital television broadcasting is a new service, requiring a new look at the "public interest, convenience, and necessity standard" so firmly imbedded in broadcast policy. Furthermore, People for Better TV argued that the Commission could not maintain that digital broadcasters are operating in the public interest, as Congress intended, without asking the public what is in their interest. Thus, People for Better TV commends the Commission for initiating this inquiry. Through its comments, People for Better TV intends to provide the Commission with the perspectives of the viewing audience and local grassroots organizations from areas throughout the nation.

Broadcasters' obligation to serve the local community is the core of the public interest standard and the underlying rationale for their free license to exclusive use of public airwaves.¹ Since the passage of the Communications Act of 1934, broadcasters have been entrusted to serve their local community needs. This responsibility is expressed in both the statute and in court rulings. Under Section 307(b) of the Communications Act of 1934, applicants for broadcast licenses must agree to provide programming service to their particular community of license.² The D.C. Circuit has affirmed this obligation, noting that "[i]n requiring a fair, efficient and equitable distribution" of service, the Communications Act encompasses "not only the reception

¹ The local basis of its service distinguishes broadcasting from cable and satellite services which consist almost entirely of national programming and retransmission of local TV stations. News, public affairs programming and other opportunities for local self-expression are important "elements usually necessary to meet the... needs and desires of the community in which the station is located...", as enumerated in the FCC's classic formulation of public interest programming obligations. Report re En Banc Programming Inquiry, 44 FCC 2203, 2314 (1960).

² 47 U.S.C. § 307(b).

of an adequate signal but also community needs for programs of local interest and importance and for organs of local self-expression.”³ Thus, only by considering the views of the local audience can the Commission develop a framework of regulation for digital broadcasters that truly serves the public interest.

We note however that the Commission’s inquiry alone does not satisfy the legislative mandate to set forth clear regulations so that both broadcasters and the public know exactly what is meant by the public interest obligations of digital broadcasters. Therefore, we request that following this Inquiry, the Commission initiate a rulemaking on the public interest obligations of digital broadcasters.

II. Challenges Unique to the Digital Era

A. The Commission Should Require DTV Broadcasters to Comply with Public Interest Obligations on All Channels that They Use.

Congress intended digital broadcasters to comply with public interest obligations on all of their channels. As the Commission notes in paragraph 11 of the NOI, when Congress authorized the Commission to “issue additional licenses for advanced television services.” 47 U.S.C § 336(a), it made clear that:

Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest.⁴

³ Pinellas Broadcasting Co. v. FCC, 230 F.2d 204, 206 cert. denied, 350 U.S. 1007 (D.C. Cir. 1956).

⁴ 47 U.S.C § 336(d) (emphasis added).

Moreover, Congress' decision to treat the spectrum set aside for "advanced television" service differently from other new services by exempting it from auction procedures, 47 U.S.C § 309(j)(2)(B) provides further evidence that Congress intended broadcasters to "pay" for the valuable gift of public property by performing public service.

1. Rather Than Rely on Broadcasters to Abide by a Voluntary Code of Conduct, the Commission Should Adopt a Flexible Approach to Enforcing Minimum Requirements.

To implement the legislative directive to impose obligations on digital broadcasters, the Commission should adopt minimum public interest requirements. By setting forth minimum measurable requirements, the Commission would ensure that the public interest is served. In contrast, self-regulatory voluntary codes of conduct have historically not been successful in ensuring that participants adhere to the prescribed conduct. See Angela J. Campbell, Self-Regulation and the Media, 51 Fed. Comm. L.J. 712 (1999).⁵ Establishing a standard facilitates the evaluation of licensees at renewal time by both the Commission and the public.

While People for Better TV rejects the idea of "voluntary obligations," we believe that the Commission could incorporate flexibility into its enforcement of the minimum requirements, thereby providing broadcasters with some leeway in deciding how to meet their obligations. Such a policy could resemble the three-hour processing guideline for children's television programming. Under that guideline, broadcasters have several means of demonstrating their

⁵ Professor Campbell's article specifically addresses the viability of voluntary code for digital broadcasters and finds that such an approach is unlikely to be successful. According to Campbell, "There are three reasons to be skeptical about the Advisory Committee's recommendation for a voluntary code. First, it is unclear whether the NAB will follow it. Second, even if the NAB does adopt a voluntary code...it is doubtful that the code will be effective in achieving the stated goals. Finally, the Model Voluntary Code raises similar questions regarding voluntariness that could cause it to be subject to constitutional challenge." Id. at 764.

commitment to providing educational and informational programming for children.⁶

To ensure that broadcasters are meeting their obligations to their community and to facilitate review of their practices, People for Better TV suggests that broadcasters who wish to fulfill their obligations in a manner that deviates from the Commission's standards should enter into agreements with the local community which outline how they intend to serve the public interest. These community contracts could be crafted through a negotiating process similar to the one currently employed by cable operators and local franchising authorities. Alternatively, broadcasters could adopt other means of ensuring that the community agrees to its public interest plan. For example, a broadcaster could invite community involvement by drafting a public interest plan and allowing citizens to vote on it either in person or on the Internet. Under such an arrangement the broadcaster should be required to televise announcements and provide information on the Internet describing its proposal and explaining how viewers could express their opinion. Regardless of how the broadcaster and the community reach agreement, these

⁶ Under the Commission's rules implementing the Children's Television Act, a broadcaster can demonstrate that it has met its children's programming obligation in several ways:

"(A) By checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of 'core programming' ... or

(B) By showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming." Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations, 11 FCC Rcd 10660, 10718-719 (1996).

Moreover, the Commission provides that "renewal applications that do not meet this guideline will be referred to the Commission, where the applicant will have a full opportunity to demonstrate compliance with the CTA by, for example, relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational or informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming." Id.

public interest plans should be kept in the broadcaster's public files, so that the FCC and the public could view them and assess whether the broadcaster was adhering to them. Only by adopting such a framework would the FCC ensure that the agency and the public would be able to evaluate a broadcaster's compliance with its public interest obligations.

2. Digital Broadcasters Public Interest Requirements Should Apply to All Channels Including Ancillary and Supplementary Services.

The broadcasters' public interest obligations should apply to every channel that they use. Thus, in a multicasting environment with program streams of varying definition, the Commission should review the broadcasters' use of each channel. Such an approach would prevent broadcasters from segregating certain programming streams, e.g., local affairs, programming for minorities, political discourse, or children's programming, from other more economically profitable ones, and placing these types of programs on channels with less desirable features. Similarly, broadcasters' responsibilities to ensure access to disabled viewers through closed captioning and video description should apply to each of their channels. Without such a policy, certain individuals might be relegated to receiving lower quality services. By making the public interest obligations apply to all channels, the Commission will ensure that needs of the entire community, including disabled people, children and ethnic and racial minorities are met.

In addition, the Commission must apply public interest obligations to the broadcasters' provision of ancillary and supplementary services. Congress clearly stated that the offering of such services must be "consistent with the public interest, convenience and necessity."⁷ Moreover, in Section 336(b), Congress stated that, "in prescribing the regulations required by

⁷ 47 U.S.C. §336(a)(2).

subsection (a), the Commission shall (3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person.” Thus, DTV licensees should have the same responsibility to meet their communities’ needs through these pay services as they do through free broadcasting.

People for Better TV supports the Advisory Committee’s recommendation that broadcasters who choose to take advantage of their datacasting capabilities also use this spectrum to transmit information on behalf of civic institutions.⁸ Moreover, the broadcasters should make all datacasting accessible to individuals with disabilities. Within these parameters, People for Better TV favors a flexible approach that allows broadcasters some leeway in deciding how they will meet their obligations.

B. The Commission’s Rules for Digital Television Should Include Protections for Consumers.

The Commission’s proposals for regulating digital television must take into account the new technology’s potentially adverse impact on consumers. In the attached comments,⁹ the Consumer Federation of America (“CFA”), a member of People for Better TV’s steering committee, sets forth the unique consumer concerns raised by the development of digital television. These concerns involve the broadcasters’ potential use of interactive technology to invade consumers’ privacy and promote unfair sales, and the broadcasters’ potential pursuit of profits in a manner that widens the digital divide and threatens the diverse expression of ideas.

⁸ See NOI at ¶ 13.

⁹ See Appendix at C-2.

1. The Commission Should Adopt Rules to Protect Consumer Privacy and Limit Abusive Selling Practices.

By converging Internet capabilities with broadcasting, digital television permits interactivity between broadcasters, advertisers and viewers. This technological development will allow for the sale of goods and services over the television as well as the collection of information from viewers about their programming and product choices. To address potential invasions of privacy and prevent targeted “overselling,” CFA and People for Better TV recommend that the Commission require broadcasters to comply with privacy guidelines that require information collectors to take the following steps: provide notice to consumers of their practices; obtain consent before sharing information with either corporate affiliates or third parties; and allow consumers access to all information that has been collected about them.¹⁰ In addition, to limit abusive selling practices, CFA and People for Better TV ask the Commission to adopt rules allowing post-purchase remedies, as well as regulations restricting interactive advertising directed at children. The Commission should also work with the Federal Trade Commission and consumer groups to set appropriate standards regarding the Children’s Online Privacy Protection Act as it applies to digital television.

2. The Commission Should Develop Steps to Ensure DTV Does Not Contribute to the Digital Divide.

The Commission should monitor both equipment costs and broadcaster subscription charges. These steps would help ensure that digital television broadcasters are not allowed to

¹⁰ See Appendix at C-2, CFA, p.23. See also Appendix at B-3, Lake Snell Perry, May 1999: 80 percent of voters favor FCC guidelines to protect consumer privacy, 83 percent think establishing privacy protection guidelines is important.

maximize their economic benefits to the detriment of lower income viewers. In its comments, CFA notes two ways in which the development of digital television may have an adverse impact on some members of the public. First, CFA questions whether the adoption of digital television will widen the digital divide. As CFA states in its comments, “[t]he expense of equipment, the cost of services, and the targeting of marketing points to a commercial model in which high-value, high income consumers participate and are targeted.”¹¹ CFA further states,

Companies introducing technologies can identify the likely “adopters” and orient their product distribution to maximize the penetration within that market segment. The competitive energies of the industry are focused on the “premier” segment, with innovative offerings and consumer-friendly pricing, while the remainder of the population is ignored or suffers price increases. The merging of informational, educational and employment opportunities over the Internet with the commercial activities of interactive TV raises concerns that the commercial model might further isolate those who have been disadvantaged by the digital divide.¹²

CFA and People for Better TV urge the Commission to monitor the market to determine whether equipment costs, such as set top boxes and digital television sets are affordable. In addition, the Commission should monitor the costs of equipment which makes television available to the disabled. In general, in adopting digital television policies, the Commission should consider those segments of the population that may be left out of the transition to digital.

Second, CFA and People for Better TV are concerned that economic pressures may lead digital broadcasters to limit the diversity of their offerings, especially educational, cultural and informational programming, or cause broadcasters to provide such programming only on a subscription basis. The Commission cannot permit digital broadcasters to make public

¹¹ See Appendix at C-2, p.6.

¹² Id.

information available only to viewers who can afford to access it through pay-per-view or subscription services. In some markets today, public, educational, and governmental offerings appear only on designated PEG cable channels, and thus are not accessible to viewers who cannot afford to subscribe to cable television. The Commission should not permit digital broadcasters to adopt a similar model. Segregating such informational fare to subscription channels would adversely impact all viewers, and would have a disproportionately detrimental effect on lower income viewers. To foster public discourse, the Commission should require that all Americans have access to civic programming. Indeed, as CFA notes, the Commission should have policies in place that obligate broadcasters to provide “programming beyond what is simply profitable.”¹³

We recommend that the Commission monitor pay-per-view and subscription charges, and reserve the right to adopt regulations to ensure that broadcasters charge reasonable rates for any non-free television services they offer.¹⁴ While People for Better TV’s comments focus mainly on the provision of public affairs and informational programming to all members of the public, we are also concerned that digital broadcasters not place entertainment programming out of reach of many viewers. In the digital model, broadcasters may find it economically beneficial to charge viewers to watch certain programming including the Super Bowl or popular sitcoms. The Commission must adopt a regulatory framework to ensure that popular television does not become a luxury item.

¹³ See Appendix at C-2, p. 8.

¹⁴ See Appendix at B-3, Lake Snell Perry, May 1999. 73 percent of voters favor FCC rate regulation of pay-per-view programming, 75 percent think this is important.

C. Digital Broadcasters Should Fulfill their Obligations to Children by Offering Educational Programming and Services as well as Additional Rating Information.

The Commission must ensure that broadcasters continue to meet their obligations to children in the digital age by providing educational and informational programming. The Commission should adopt standards for making additional program rating information available so that parents can more easily determine which shows they want their children to watch.

1. The Three-Hour Rule Should be Transferred Proportionately to DTV.

The Commission should adopt Children Now's proposal for applying the current Children's Television Act to digital television. In its extensive comments attached,¹⁵ Children Now, a member of the People for Better TV steering committee, has proposed a means of implementing the 3-hour children's programming guideline in a manner that takes into account both the increased number of programming hours offered by digital broadcasters as well as variations in the viewers' experience which depend on whether the broadcaster airs the programming in standard or high definition. Moreover, Children Now maintains that the Commission's rules concerning children's advertising limits, host-selling and program-length commercials must be met on all program services including ancillary and supplemental services. The Commission should adopt Children Now's proposals to ensure that digital broadcasters fulfill their obligation to children.

The public's consistent interest in the provision of quality educational programming for children is reflected in the letters People for Better TV has collected from across the country.

¹⁵ See Appendix at C-1.

Viewers have expressed concerns that the current amount of programming is insufficient, that the quality is poor, and that the stations air too many commercials during children's shows. For example, Natalie Gallant from NOW in Boston, writes that the local NBC affiliate offers no programming for children under 6 years old and only one program for children under 11 years and she questions the educational value of the station's programs. Likewise, Dr. W. Curtiss Priest, director of the Center for Information, Technology and Society in Boston, expressed concern that the amount of children's programming at local Boston station WBZ had declined 50% from 1997 to 1999 after the station was acquired by CBS.¹⁶ Letters from other cities voice similar concerns. In Detroit, Peggy Goodwin found that her local stations provide quality programming for children 5-10 years old, but fail to provide "quality, educational programs for older youth."¹⁷ Concerns about the lack of quality programming have also been expressed by young people themselves, as can be seen in the attached letter from 17 year-old Elizabeth Cohen in New York.¹⁸ Finally, several viewers, including Doshia Harris, Susie Green, and Pam Parks from Georgia, have written to the Commission complaining about the commercialization of children's programming.¹⁹ The Commission should consider these letters from individual viewers throughout the country as a call to action to ensure that digital broadcasters meet their obligations to children.

¹⁶ See Appendix at D-1a, for both Gallant and Priest letters.

¹⁷ See Appendix at D-3b.

¹⁸ See Appendix at D-1a.

¹⁹ See Appendix at D-2a.

2. The Commission Should Adopt Standards to Make Independent Ratings Available.

While People for Better TV is opposed to censorship, we believe the Commission must respond to parents' demands for more information about the content of programs. Thus, the Commission should modify the V-Chip regulations in the digital environment to provide more information to viewers. Congress anticipated that new technology would allow for changes in the blocking system. It stated, "[a]s new video technology is developed, the Commission shall take such action as the Commission determines appropriate to ensure that blocking service continues to be available to consumers."²⁰ In addition, the Commission has indicated its preference for an "open, flexible approach to the development of industry standards and regulations that would accommodate the possible development of multiple rating systems."²¹

People for Better TV recommends that digital broadcasters be required to provide viewers a means of discovering what other groups think about the content of programs. Through the increased information capability of digital technology the present ratings system can be substantially improved. Broadcasters should provide access to much more information, from a variety of independent sources, about the nature (such as violent or sexual content) of the programs being broadcast, as they are being broadcast. This information would enable parents to screen out programs they do not want in their homes.

We encourage the FCC to conduct meetings on the next stage of the V-Chip and the ratings system. The FCC, working with software developers, should consider the following

²⁰ 47 § U.S.C. 330(c)(4).

²¹ Technical Requirements to Enable Blocking of Video Programming based on Program Ratings, 13 FCC Rcd 11248, 11251 (1998).

questions: Can filtering software that reads and screens predetermined codes be downloaded to the next generation of television sets to adapt to a more complex digital environment? Just as television stations are working with advertisers to develop “click through” technologies for viewers to buy products they see during commercial or programming, can technologies allow viewers to “click through” to independent ratings by local groups, or national groups such as the National Institute for Media and the Family?²²

Viewers clearly want more information on program content. Survey results indicate that 84 percent of voters favor an independent ratings system, while 87 percent think developing such a system is important.²³ These findings are echoed by citizens’ letters such as the one from Rebecca Rogers of Carolina Peace Resource Center in Columbia, South Carolina. Ms. Rogers writes, “digital broadcasters should be required to provide an easy to understand independent ratings system about the violent and sexual content of programs.”²⁴ Digital technology will allow for the provision of multiple rating systems both by using the additional spectrum available and by providing links to the Internet where such information can be accessed.

III. Responding to the Community

Local television stations, not networks, not corporate collections of broadcast operations, but local television stations are licensed by the FCC. If the public interest standard is to mean

²² See Television Ratings (visited Mar. 20, 2000)
<<http://www.mediaandthefamily.org/rate.ctm?s=tv>>.

²³ See Appendix at B-3, Lake Snell Perry, May 1999.

²⁴ See Appendix at D-2b.

anything in the digital age, People for Better TV asserts it must mean program service to the local community, and *all* segments of the local community, men and women, minority and majority, urban and rural. Furthermore, while the FCC may not be able to ensure that broadcasters are serving the entire community, it can put in place mechanisms to encourage a dialogue and some level of accountability between stations and those they are licensed to serve. These principles should guide the Commission's determination of the minimum public interest obligations of broadcasters.

While local service has long been a bedrock goal of the public interest standard, it has for most of the history of broadcast regulation been more promise than practice. Two of the four programming requirements in the 1946 *Blue Book* focused on local programs and "the discussion of local issues,"²⁵ and in 1960 the top two FCC programming priorities were "opportunity for local self-expression" and "use of local talent."²⁶ Still, as *Office of Communications, United Church of Christ v. Federal Communications Commission* (hereinafter *UCC v FCC*)²⁷ and the subsequent *Kerner Commission Report*²⁸ on the neglect of minority audiences by television stations made clear, an emphasis on local programs did not necessarily mean all segments of the local community were served. With the *Ascertainment Primer* in 1971, the FCC finally put forth

²⁵ See Public Service Responsibilities of Broadcast Licensees, 12, 36-40 (1946) ("Blue Book").

²⁶ Commission Policy on Programming, 20 Rad. Reg. (P&F) 1901, at 1913 (1960).

²⁷ Office of Communications, United Church of Christ v. Federal Communications Commission, 359 F.2d 994 (D.C. Cir. 1966).

²⁸ Report of the National Advisory Commission on Civil Disorder, Otto Kerner, Chairman, 210 (Bantam, 1968).

guidelines to “aid broadcasters in being more responsive to the problems of their communities.”²⁹

Thus, stations were not only informed about a wider range of local issues, and thus able to respond, they actually became more accountable to all segments of the community.

For thirteen years the Commission struggled to improve on the sad history of the prior forty. But in 1984 the Commission (and the political tide) reversed course and ruled that local service to all segments of the local community would be best promoted not by clear guidelines, but by the laissez-faire practices of the “Roaring 20's” when broadcasters were first being regulated.³⁰ Despite the bold declaration of the National Association of Broadcasters of billions of dollars of local service,³¹ what we have found is a retreat from “the discussion of local issues” by too many broadcasters, and a destruction of community affairs departments justified by “de-regulation.” This state of affairs should not be carried into the digital age.

A. Digital Television Broadcasters Should Be Required to Provide One Hour a Day of Local Public Affairs Programming.

1. Local Broadcasters are Failing to Address Local Needs.

“There are not enough local programs dealing with important local issues. Local elections had very little public programming on local transportation or initiative issues or

²⁹ Primer on Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 651 (1971).

³⁰ Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 98 FCC 2d 1076, 1116 (1984).

³¹ A National Report on the Broadcast Industry's Community Service, National Association of Broadcasters (April 1998) claimed \$6.8 billion dollars of service to community. However, as demonstrated by A Methodological Evaluation of the NAB Report, Project on Media Ownership, (January 2000), the NAB's report cannot be taken seriously. See Appendix at B-2.

information about what is happening in our state legislature,” writes Phyllis Rowe, President of the Arizona Consumers Council.³² We have heard this complaint hundreds of times over the past year from citizens from all walks of life from across the country. People for Better TV recommends that all digital television broadcasters be required to devote at least one hour a day to discussion of local issues important to the community of license.³³ While recognizing that a wide range of issues important to the community will be national and international in scope, we suggest that the unique qualities of local television service are best suited to addressing local concerns. As noted above, this requirement should not be relegated to only one channel or program service provided by the licensed broadcaster, but should apply across all channels.³⁴

In cities across the country members of People for Better TV reviewed quarterly reports which demonstrated little or no attention to the needs and interests of the diverse members of their communities. One shocking example was the quarterly report from KPIX-TV San Francisco. Close inspection of their program report on activity in the last three months of 1999 would not reveal one program squarely devoted to any of the several ballot initiatives during the November 1999 election.³⁵ Other examples: Helen Grieco, President of California NOW writes,

[e]arlier this month I visited two stations, KTVU-TV and KRON-TV. While

³² See Appendix at D-4b.

³³ See Appendix at B-3, Lake Snell Perry, May 1999. 80 percent of voting Americans both favor think important People for Better TV’s proposal to require local television stations to produce programs to address local concerns.

³⁴ One means of satisfying this might be to use one of the multicast channels to air the meetings of state legislators, or city councils, or boards of education, or public utility commissions. This might be done in cooperation with cable providers who air these important civic fora on their Public, Education, and Government channels. By providing this service all Americans could have free access to the workings of their important local institutions, not just those who can afford cable.

³⁵ See Appendix at D-5b.

these stations provide a standard list of community issues, it is clear from the program reports to the FCC that this list isn't worth the paper it's printed on. Not only are their lists so generic as to be unhelpful, it's clear that they don't change from quarter to quarter (quite unlike the challenges in our very diverse community). Both of these channels also rely heavily on the local news as a means of satisfying their obligation to provide for discussion of important issues. One look at the news makes it clear that as good as it may be in providing headlines, soundbites from mainly white males are not a valid substitute for discussion from a range of perspectives.³⁶

Paul Schlaver of the Massachusetts Consumer Coalition, writes: "I simply cannot recall one decent local network offering some in-depth coverage of these complex issues. Such stories (state privacy legislation and broadband access) cry out for more time and attention ..." And Professor Ceasar McDowell of Newton, Massachusetts writes: "In reviewing the public file from two stations it is clear that stations fulfill their public interest obligations by piecing together unrelated and often non-local programming."³⁷

These comments reinforce research commissioned by the Benton Foundation. Professor Philip Napoli, of the Graduate School of Business at Fordham University, studied 142 commercial broadcast stations over a two week period in January 2000. He found that of the 47,712 broadcast hours only 156.5, or 0.3 percent were devoted to local public affairs programming. Local plus national public affairs programs reached 1.09 percent of total broadcast hours studied.³⁸ To say that there has been a decline in public affairs programming would be an understatement. Between 1973 and 1979, the average percent of public interest

³⁶ See Appendix at D-5b.

³⁷ See Appendix at D-1a, for both McDowell and Schlaver letters.

³⁸ Philip Napoli, Market Conditions and Public Affairs Programming: Implications for Digital Television Policy, Benton Foundation, March 2000. It is important to note that Professor Napoli used the same definition of public affairs as the Commission in its 1984 Revision of Programming rules. See Appendix at B-1)

programming was 4.6 percent.³⁹ Perhaps, of greater importance than data demonstrating a clear decline in public affairs service, is Professor Napoli's suggestion that

although larger markets provide a greater aggregate amount of local public affairs programming, individual stations do not respond to increasingly competitive market conditions by producing more public affairs programming. Nor, for that matter, do they respond by reducing the amount of local public affairs programming . . . the provision of local public affairs programming appears highly resistant to economic influences.⁴⁰

This suggestion undermines the core rationale of the *1984 Revision of Programming* decision that "licensees will continue to supply informational, local and non-entertainment programming in response to existing as well as future marketplace incentives."⁴¹

2. Regulatory Certainty is Needed to Ensure Local Needs are Addressed.

In various cities, People for Better TV members found cutbacks in community affairs departments justified not by the market, but by the perception of recent "de-regulation." Jason McInnes and Gordon Quinn of Kartemquin Films write that one Chicago station executive explained the cutback in public affairs programs as follows: "With the FCC de-regulation things have changed."⁴² Cher McIntyre of Consumer Action in Los Angeles writes: ". . . local Los Angeles stations (ex. CBS-KNXT-LA) have elected to eliminate Community Relations Departments altogether."⁴³ People for Better TV asserts that the assumption that market mechanisms can replace clear guidelines is unfounded. The Fowler Commission's "free market"

³⁹ Revision of Programming at 98 FCC 2d at 1080.

⁴⁰ Napoli at 13.

⁴¹ Revision of Programming, 98 FCC 2d at 1080.

⁴² See Appendix at D-3a.

⁴³ See Appendix at D-5a.

experiment with local programming has failed citizens and consumers hungry for the discussion of important local issues.

When Congress stepped in with the Children's Television Act to correct the Fowler Commission's radical elimination of children's program requirements,⁴⁴ the Hundt FCC bravely stepped up to create clear and certain guidelines. As Children Now has set forth, this regulatory certainty has improved programming for children.⁴⁵ Regulatory certainty needs to be established regarding local public affairs programs. If localism remains the bedrock of the public interest standard, setting a clear goal as to the amount of time a station will devote to address local issues is obviously needed to achieve that standard.⁴⁶

3. Local Public Affairs Programs Should Address the Needs of All Segments of the Community of License.

While *UCC v. FCC*, stands, in part, for the proposition that a federal licensee is obligated to operate in the interest of the entire community, we understand that serving all segments of the community is a large task. Digital television service provides local broadcasters unique opportunities to expand their programming service. A much wider variety of local needs can now be met. And as we suggested in our initial Petition for Inquiry, the local needs of diverse communities are not well served by national programs. Network programming has a difficult enough time depicting the true diversity of New York City or Los Angeles,⁴⁷ how could it

⁴⁴ See Newton Minow, Abandoned in the Wasteland, pp. 51-57 (Hill and Wang) (1995).

⁴⁵ See Appendix at C-1, pp. 21-29.

⁴⁶ In addition to providing local programming, it is important for the station to provide that program during the regular broadcast day, rather than at 4:00am. If television is to contribute to community discourse the community should be awake during the contribution.

⁴⁷ See Comments of LULAC, Appendix at C-3.

possibly be expected to address the diverse local interests in Houston, Texas or Columbia, South Carolina?

Therefore, in addition to requiring a clear numerical standard for public affairs programs, the Commission should require that these programs address the needs and interests of all segments of the community served by the broadcast licensee, regardless of the ethnicity or wealth of those segments. Sandy Close and Emil Guillermo of New California Media note:

There are numerous examples of how local broadcasters give short shrift to the concerns of the multi-racial, multi-ethnic communities that now comprise the San Francisco Bay Area. . . Candidates' debates broadcast over the network local affiliates are routinely conducted by representatives from mainstream TV and print media -- invariably people who are out of touch with the concerns of major communities of color. Yet the nightly news anchors of Spanish, Mandarin, Cantonese and Korean language television stations in the Bay Area command large audiences and are exactly the people who should be fielding questions to candidates.⁴⁸

Again, these comments are echoed across the country, even in areas thought not to be as diverse as the San Francisco Bay Area.⁴⁹

Second, all of the broadcast *area* deserves service. Florence Rice of the Harlem Consumer Education Council, writes: "It is my personal opinion that Harlem has been extremely neglected by local television broadcasters." Linda Cookingham, also notes: "My husband and I tune in the NYC TV stations for the daily news and are distressed that our 'local' news is rarely broadcast. In fact, the stations are hard pressed to include the Hudson Valley in their weather reports."⁵⁰ Surely the public interest does not mean that stations need only serve those parts of

⁴⁸ See Appendix at D-5b.

⁴⁹ See Appendix at D-1 and D-2 especially.

⁵⁰ See Appendix at D-1b for both Cookingham and Rice letters.